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EXHIBIT 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

PETER TODD, an individual,) Case No. 19-cv-01751-DMR
)
Plaintiff,) Oakland, California
)
) Thursday, August 22, 2019
vs.) Courtroom 4 - 3rd Floor
)
SARAH MICHELLE REICHWEIN)
aka ISIS AGORA LOVECRUFT,)
an individual,)
)
Defendant.)
)

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE DONNA M. RYU
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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25 Proceedings recorded by electronic sound recording; transcript produced by transcription service.

1 Planned Parenthood case. It doesn't say that I am allowed or, you
2 know, I can permit discovery. It says I must give discovery. So
3 that's what I'm hung up on here.

4 MR. ROETHLISBERGER: So if -- Your Honor, if I may, I
5 actually was counsel on a companion case with the Planned
6 Parenthood case, so I'm very familiar --

7 THE COURT: Then I'm very disturbed that you didn't
8 brief it.

9 MR. ROETHLISBERGER: Your Honor, the issue is is that if
10 the Plaintiff had decided the discovery was necessary, they could
11 have come forward with an affidavit describing the discovery that
12 was needed and why it was essential.

13 THE COURT: Well, that -- there's a provision for that
14 in Rule 56.

15 MR. ROETHLISBERGER: Correct, Your Honor.

16 THE COURT: But we have a basic, you know, threshold
17 issue, which is am I even allowed to consider this at this stage.
18 And I -- you haven't cited me a single case that says I am.

19 MR. ROETHLISBERGER: Your Honor, there -- I am very
20 willing to address this on supplemental briefing if you'd like.
21 The issue here is that on a Rule 56 motion, if discovery is needed
22 by the Plaintiff to oppose, they are welcome to move for such
23 discovery. The parties have agreed that discovery is stayed. The
24 parties -- in our CMC motion. The parties have agreed that if the
25 Court rules against the Defendant in this case -- or in this

1 motion, that -- that the case is stayed until the Ninth Circuit
2 rules on it. That is my understanding of the case law, and I
3 don't -- during our CMC discussions about discovery, that was not
4 countered by the Plaintiff.

5 MR. JEFFREY ROSENFELD: If I may add, I think I actually
6 agree --

7 THE COURT: This is Mr. Jeffrey Rosenfeld.

8 MR. JEFFREY ROSENFELD: Jeff Rosenfeld for the
9 Plaintiff. I'm sorry. I think I actually agree with Mr.
10 Roethlisberger, at least to an extent, that had the Plaintiff
11 sought discovery, yes -- or requested discovery, yes, Your Honor
12 would have to consider that request as a request under Rule 56.
13 We did not request that. And if the -- so that the Court would
14 need to treat this anti-SLAPP motion as a motion for summary
15 judgment and decide it now on the submissions.

16 And it's our position that the motion, based on the
17 submissions, should be denied.

18 THE COURT: Okay. Well, here's a -- it bumps up against
19 a little case management problem; right? I don't allow more than
20 one summary judgment motion unless there's a really good reason
21 for it and I don't see one in this case. This is a very fact-
22 intensive case. We don't do seriatim motion work on Rule 56
23 because it's very time-intensive.

24 If you're saying -- if both sides agree that I should decide
25 this at Rule 56 right now on this record and nobody needs anything

1 further, and I decide it as a SLAPP motion under Rule 56, then
2 that's one thing.

3 But if you're saying, Well, you know, of course that we're
4 not giving up any rights down the road, that maybe we want to have
5 another summary judgment motion on something else, you know,
6 consider this carefully because no discovery has been done. So
7 this is it. I'm not saying I'll handle it that way, but I want to
8 make sure that I understand your positions in light of my case
9 management.

10 MR. JEFFREY ROSENFIELD: Yes, Your Honor. We have
11 considered this issue and we are prepared to have this motion
12 treated as an anti-SLAPP motion equivalent to a summary judgment
13 motion under Rule 56.

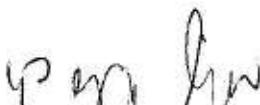
14 MR. ROETHLISBERGER: This is Nick Roethlisberger. We
15 are as well.

16 THE COURT: Okay. Now, the -- of course, you've also
17 said that you're going to appeal anything I do, so I want to make
18 sure that I get it right, and of course you didn't give me the
19 case law to support your position, so I'll need the case law. I'm
20 a little disappointed, given that you gave me a lot to read in
21 this case, that this is the key issue and you didn't address it.
22 I'm loath to give you another attempt because it's not fair. It's
23 not fair to my chambers that, you know, have to do more work
24 because you didn't get it right the first time.

25 But I feel like I need to, you know, give you a chance to

1 (Proceedings adjourned at 3:10 p.m.)
2

3 I, Peggy Schuerger, certify that the foregoing is a
4 correct transcript from the official electronic sound recording
5 provided to me of the proceedings in the above-entitled matter.

6 
7

Signature of Approved Transcriber

August 30, 2019

Date

8 Peggy Schuerger
9 Typed or Printed Name

10 **Ad Hoc Reporting**

11 Approved Transcription Provider
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Northern District of California

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